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September 8, 2006

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Oral *Ex Parte* Communications, CC Docket No. 96-115

Dear Ms. Dortch:

This letter is being filed to notify you that on September 7, 2006, Lois Pines, Regulatory Counsel of InfoNXX, Inc., and the undersigned, its counsel, met with Adam Kirschenbaum, Jonathan Reel, Tim Stelzig, Rodney McDonald, Cindy Spiers, and Bill Dever of the Wireline Competition Bureau, Christina Clearwater and Nese Guendelsberger of the Wireless Telecommunications Bureau, and Scott Bergmann and Ian Dillner. We discussed the Commission's recent NPRM in this docket that, *inter alia*, sought comment on how the Commission can protect the confidential information of customers, including wireless customers. The attached handout was distributed and contains information that we discussed. We also discussed language in pending legislation that addresses similar issues. Specifically, a provision in S. 2389 states that "[a] provider of commercial mobile services . . . may not include the wireless telephone number information of any subscriber in any wireless directory assistance service database unless the mobile service provider . . . obtains express prior authorization for listing from such subscriber" The companion House bill, H.R. 4943, has similar language: "A telecommunications carrier may not, except with prior express authorization from the customer, disclose the wireless telephone number of any customer or permit access to the wireless telephone number of any customer." We explained that these provisions could form the basis for providing wireless customers with important protections for their confidential information.

If you have any questions, please contact the undersigned.

Sincerely,

/s/Gerard J. Waldron

Gerard J. Waldron
Counsel to InfoNXX, Inc.

Attachment

COVINGTON & BURLING LLP

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cc: Mr. Adam Kirschenbaum
Mr. Jonathan Reel
Mr. Tim Stelzig
Mr. Rodney McDonald
Ms. Cindy Spiers
Mr. Bill Dever
Ms. Christina Clearwater
Mr. Nese Guendelsberger
Mr. Scott Bergmann
Mr. Ian Dillner

INFONXXX

CPNI Proceeding

(CC Docket No. 96-115)

Lois Pines & Gerry Waldron

September 2006

Who Is InfoNXX?

Founded in 1991, InfoNXX is the leading competitive directory assistance provider for wireless and competitive networks.

- InfoNXX, a privately held company with over 6,000 employees, is headquartered in Bethlehem, Pennsylvania with call centers throughout the United States in Arizona, California, North Carolina, and Texas.
- InfoNXX is a major supplier of DA in U.K. and recently has entered the market in France and Italy.

InfoNXX uses live operators to provide higher quality service and has pioneered many enhanced DA services such as:

- “call completion” service that connects the caller directly to the number.
- movie listings for local theaters, restaurant reservations, driving directions and other information in addition to providing telephone numbers.

The Commission Should Protect the Privacy of Wireless Customers' Phone Numbers

Wireless customers may soon be in for a rude awakening. Although wireless carriers have traditionally kept customers' cell phone numbers private, the wireless industry is preparing to unveil a new wireless directory that would make these numbers publicly available for the first time.

The Commission's recent NPRM asks: "[D]oes the mobile and personal nature of wireless phones increase the privacy expectations of wireless customers?" The answer is an emphatic yes. And the Commission should seize this opportunity to protect the privacy of customers' cell phone numbers before it is too late.

THE PROBLEM. Customer privacy is threatened because there is no law or regulation prohibiting a carrier from disclosing a wireless telephone number.

- Since cell phone service was started in the early 1980s, the industry practice has been to not disclose telephone numbers. However, because this practice is not required by law, the industry has always been free to change it. And that is exactly what it is planning to do.
- Specifically, the wireless industry is preparing to offer a new “wireless 411” directory. Although the proposed directory is in some respects a positive development, it threatens the privacy that customers have traditionally enjoyed and relied upon.
- Just as many Americans were surprised to learn that their phone records were available over the Internet, so would many be surprised and upset to learn that their cell phone numbers were available to anyone who would pay for them. The Commission should be proactive by building in safeguards now before complaints arise.

THE ANSWER. The Commission should require carriers to obtain customers' prior consent before publicly disclosing their cell phone numbers.

- Striking the Right Balance. Adopting regulations requiring prior consent strikes the proper balance between industry needs and customer privacy. Most importantly, the regulations would allow the wireless 411 directory to proceed while simultaneously ensuring that the customer retains control over his or her cell phone number.
- Requiring Consent is not Burdensome. Regulations protecting privacy will not be burdensome on the industry because they can be complied with in a number of ways, either by blanket consent or refusal or using text to accept or decline a directory assistance request in real-time.
- Privacy Protections Will Strengthen the Directory. Because a directory is only as valuable as the number of people included, privacy protections will strengthen the directory by increasing customer participation. If carriers only provide customers with a choice between full public disclosure or non-participation, many will opt out of the directory entirely. If customers are comfortable that participation would not necessarily force them to relinquish control of their private numbers, more customers would participate.
- Wireless is Different Than Wireline. There are important policy reasons to treat wireless numbers differently than wireline numbers. First, wireless phones are personal and always with you, so unwanted calls are more intrusive. Second, unlike wireline calls, customers pay for incoming wireless calls. Third, reducing unwanted wireless calls provides a public safety benefit (e.g., less calls while a customer is driving).

The Commission Has the Authority to Adopt Regulations Protecting the Privacy of Wireless Numbers.

- Statutory Authority. Section 222 of the Act imposes broad duties on carriers to protect “the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, **and customers.**” Thus, Section 222 imposes duties that are broader in scope than merely protecting the more narrow category of “customer proprietary network information.” The Commission has authority to adopt rules implementing the requirements of Section 222.

Proper Notice. The NPRM specifically asks whether additional protections may be required for wireless customers given the unique privacy concerns that arise in the wireless context. Accordingly, it would be proper to adopt regulations in this rulemaking protecting the privacy of wireless phone numbers.